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### New FOC Laws, Policies, and Forms

The State Court Administrative Office (SCAO) has released new policies, procedures, and forms to implement new friend of the court (FOC) laws, effective December 1, 2002.

#### Charging Child Support

Under the new laws, child support must now be stated in monthly amounts. Support must be prorated at the beginning and the end of the obligation. Support charges at the beginning of the month and becomes past due if it is not paid by the end of the month. A payer may pay support in advance by designating the payment as an advance payment provided the payer does not owe arrears on a case. If a payment is more than the amount due in a month, it will be distributed when the next charge is made if the overpayment is less than the monthly charge. If an overpayment is more than the monthly charge, it will be returned to the payer.

SCAO developed ADM 2002-10 to convert weekly charges to monthly charges. FOC offices will convert the former weekly child support amounts to a monthly charge by multiplying the weekly charge by 4.35. Until MiCSES is able to complete converting old orders, FOCs are not required to convert existing orders. While the frequency support is charged changes, monthly charges will not require changes in the current income withholding methods. Support will still be collected through income withholding as a payer is paid. If a payer is paid weekly, the monthly amount is divided by 4.35 to determine income withholding.

#### Parenting Time

The new laws define parenting time as an act or omission that interferes with a parent's right to interact with a child as governed by the court order. The FOC has the right to refuse to enforce parenting time violations when: 1) the complaint is not timely; 2) the order does not address the issue in the complaint; or 3) the party complaining has two or more unwarranted complaints, was assessed costs, and has not paid the costs.

## Big Changes in the 2003 Child Support Formula Manual

The State Court Administrative Office has just completed the release of the 2003 Child Support Formula Manual. There have been a number of significant changes to the 2003 Child Support Formula Manual. A complete list of changes can be found on page II of the manual.

In addition to the economic updates, all amounts were adjusted to reflect the statutory change to monthly support amounts. The manual also has a new look. The contents have been reorganized into a new format. [Do you think that you can find section 2003 MCSF 2.01\(B\)?](#) This would be the 2003 Michigan Child Support Formula Manual, Section 2.01, paragraph B.

Other changes include:

- Spousal support between the parties in the case being considered will no longer be counted as income or a deduction from income.
- Non-custodial parent Social Security Benefits received by the children are to be counted as that parent's income.
- The shared economic responsibility threshold has been lowered to 52 overnights, and the formula has changed to cubing (the third power of a number) the number of overnights. To view the shared economic responsibility formula, please see page 27 of the 2003 Michigan Child Support Formula Manual.
- Shared economic responsibility formula may be applied to support modifications when there is a change of circumstances justifying a modification.
- The definition of "ordinary" medical expenses has changed. Ordinary expenses are to be paid as a regular part of a support obligation. The custodial parent maintains the annual family ordinary health care amount to pay ordinary expenses. The annual ordinary health care expense for one child is \$280.00 annually or \$23.33 monthly.

The 2003 Child Support Formula Manual takes effect on July 1, 2003. The 2001 Child Support Formula Manual remains in effect until June 30, 2003. The delay will allow time for software development and for courts and practitioners to familiarize themselves with the changes.

Comments or suggestions regarding the content of the child support formula should be put in writing and sent to [MCSF@courts.mi.gov](mailto:MCSF@courts.mi.gov) or Michigan Child Support Formula, c/o State Court Administrative Office, Hall of Justice, P.O. Box 30048, Lansing, MI 48909.

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### **Where to find the 2003 Child Support Formula Manual**

Copies of the 2003 Michigan Child Support Formula Manual were sent to judges, friends of the court, and prosecuting attorney offices in mid December 2002. Manuals will no longer be sold by the Michigan Department of Management and Budget, so it is important to know where to locate a copy.

The 2003 Child Support Formula Manual and Schedules Supplement can be viewed or downloaded for free from: <http://courts.michigan.gov/scao/resources/publications/manuals/focb/2003MCSFmanual.pdf>. Copies are being provided for all depository libraries for the state of Michigan.

West Group will sell printed copies of the 2003 Michigan Child Support Formula Manual. Please contact (800) 344-5009 for phone orders and ordering information. For web sales go to [www.westgroup.com/store/](http://www.westgroup.com/store/).

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### **Capitol Corner**

Between the last publication of the Pundit in October 2002 and the close of the legislative session at the end of December 2002, five house bills were introduced. None of the bills were signed into law. For any one of these bills to become a public act, it will have to be reintroduced in another legislative session. To view these and other bills please go to: <http://www.michiganlegislature.org/>.

**House Bill 6508** was introduced on November 7, 2002 and referred to the Committee on Family and Children Services. The bill would amend the Support and Parenting Time Enforcement Act. Under the bill, if a portion of support is paid as child support, the recipient of support would file an annual accounting with the court itemizing expenditures for each child for whom the support is paid. The recipient of support would file the accounting within 35 days after each anniversary date of the support order or of a modification of the support order.

**House Bill 6552** was referred for a second reading on December 5, 2002. The bill would amend the Social Welfare Act. The bill provides that all rights to current, past due, and future child support payments payable for a child under the supervision of the Family Independence Agency (FIA), and for whom the FIA was making state or federally funded foster care maintenance payments, would be assigned to the FIA while the child was receiving or benefitting from those payments. When the FIA ceased making foster care maintenance payments, any past due support accrued under the assignments would remain assigned to the FIA and the assignment of current and future support rights to the FIA would stop.

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**House Bill 6553** was referred for second reading on December 5, 2002. The bill would amend the Office of Child Support Act. Under the bill, the Office of Child Support would be responsible for developing and administering the Child Support Bench Warrant Enforcement Fund. The fund would be used to administer and provide grants for activities to enforce bench warrants associated with the collection of child support.

**House Bill 6554** was referred for second reading on December 5, 2002. The bill would amend the Revised Judicature Act. The bill would increase the judgment entry fees by \$10.00 to: 1) \$40.00 for uncontested domestic relations cases; 2) \$60.00 when mediation was provided; and 3) \$80.00 when an evaluation was conducted. The bill would have extended the judgment entry fees to all domestic relations cases in which custody, parenting time, or child support for a minor child is determined by the court. The increase in fees would be placed in the Bench Warrant Enforcement Fund. Under the bill, if a fee is waived or suspended, the court could require by order in the final judgment that one or more parties to the case pay the fee.

**House Bill 6555** was referred for second reading on December 5, 2002. The bill would amend the Support and Parenting Time Enforcement Act. The bill would require the friend of the court to send a notice of arrearage to a payer if an income withholding is not immediately effective and requires enforcement, or the amount of the withholding is going to be administratively adjusted. The payer would have 21 days to submit an objection and request a hearing to the income withholding or the administrative adjustment of the income withholding. The bill would allow the Office of Child Support, friend of the court, or the prosecutor to initiate contempt proceedings against an employer who failed to honor an income withholding notice. The bill would also allow the court to find a payer in contempt, if the individual failed to participate in a work activity after a referral was made by the friend of the court. Under the bill, a payer could be committed to the county jail, but allowed to leave to participate in work activity. The bill would allow the court to hold a source of income responsible for a child support obligation if the source of income knowingly and intentionally failed to withhold the child support.

## Cases in Brief

In *Shinkle v Shinkle*, \_\_\_ Mich App \_\_\_ (December 13, 2002), the Court of Appeals examined whether discovery could be used to obtain information in a party's prenuptial agreement with a current spouse. The asserted purpose of the discovery was to determine whether payments under the prenuptial agreement were income under the requirements of the Michigan Child Support Formula.

Subsequent to the parties' divorce, Linda Shinkle married James Rodney. Their prenuptial agreement provided that Rodney would pay Shinkle a \$50,000 monthly allowance, reportedly to cover the couple's household expenses. During proceedings to modify support, Norman Shinkle sought to discover the terms of the prenuptial agreement, asserting that the payment was income for Linda Shinkle. Linda Shinkle and Rodney opposed disclosing the agreement because it contained irrelevant confidential financial arrangements between them as well as Rodney's financial information. The trial court denied discovery, concluding that the agreement was "not relevant and not reasonably calculated to lead to discoverable evidence."

The Court of Appeals noted that the Michigan Child Support Formula includes as income "an amount of money that is due to an individual as a debt of another." In accordance, it concluded that discovery of terms of the prenuptial agreement was necessary to determine whether the payment was income. However, the court held that the discovery was to be limited to the terms related to the \$50,000 monthly allowance. In order to protect Rodney's legitimate expectations of privacy, the court further instructed the trial court to conduct an in-camera review of the agreement and to redact Rodney's financial information and irrelevant confidential arrangements between the married couple.

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In *Rose v Stokely*, \_\_\_ Mich App \_\_\_ (October 1, 2002), the court of appeals considered whether the Paternity Act gives a court discretion to apportion confinement expenses between the parents and whether the allocation provision of the act violates equal protection guarantees.

The trial court apportioned confinement expenses, requiring the mother to pay 41 percent of the expenses and the father to pay 59 percent of the expenses. After reviewing MCL 722.712(1) and MCL 722.717(2), the Court of Appeals concluded that the plain language of the statutes require that the court order the father to pay all of the confinement expenses.

Having concluded that the Paternity Act requires the father to pay all of the confinement expenses, the Court of Appeals next considered whether that provision constitutes impermissible gender-based discrimination in violation of the equal protection clauses of the Michigan and Federal constitutions. The court reasoned that the statute created a classification based on gender, and that the asserted reasons for the classification did not pass the intermediate level of review required for gender-based classifications. However, because the Court of Appeals found the provision constitutional in a previous case, *Thompson v Merritt*, 192 Mich App 412 (1991), the *Stokely* court was compelled by MCR 7.215(I) to follow the rule of law established in *Thompson*.

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The FOC may conduct informal joint meetings to resolve parenting time complaints. If the complaint is not resolved the person conducting the meeting may make a recommendation which will be incorporated into an order unless one of the parties objects within 21 days. If an objection is filed, a hearing will be held. Only a person who has received domestic violence training from SCAO is eligible to conduct a joint meeting. A person who has attended an MJI domestic violence course or New Friend of the Court Employee training since January 1, 2000 has received the necessary training.

A person may be found in contempt if the parenting time order is violated without good cause. Good cause includes the safety of a party or child. In addition to other remedies, the court may order a person found in contempt for violating a parenting time order to participate in a community corrections program.

The court may assess sanctions of up to \$250 for the first violation, \$500 for the second violation, and \$1000 for the third violation when a person engages in a parenting time dispute in bad faith. Sanctions are a judgment and may be collected the same way other judgments are collected. They are deposited into the 215 fund to be used to finance non-IV-D activities. The court may also impose costs in favor of the a party against a party who acts in bad faith.

When a parenting time complaint is filed, the FOC may investigate and recommend a modification to the parenting time order. If a party does not object, the FOC may submit an order to the court adopting the recommendation. If an objection is filed, a hearing is scheduled. The court may use the report or recommendation to establish a fact if the parties stipulate to its use or no party objects to its use if there is no other evidence presented concerning the fact.

The laws require parenting time to be enforced pursuant to SCAO guidelines. ADM 2002-11 "Guidelines for Enforcement of Custody and Parenting Time Violations" was released on November 27, 2002 to satisfy this requirement. The guidelines explain that makeup parenting time should be used for the most simple parenting time violations, joint meetings should be used to try to resolve disagreements over portions of the order, investigations and motions should be used to change the order, and show cause proceedings should be used with the more difficult cases. The guidelines give examples of when and when not to use a particular remedy and provide information concerning how to deal with parenting time disputes in domestic violence cases.

### **Health Care Enforcement**

The new laws change health care enforcement. A person seeking reimbursement must demand payment from the other parent within 28 days after insurance coverage has paid its share, and the complaint must be submitted to the FOC within

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one year of the date the expense was incurred (except when there were delays in obtaining insurance coverage or when the parties have an agreement and one of them defaults in the agreement). When the other party does not pay the bill, the FOC sends the complaint to that party and, if an objection is not filed within 21 days, the amount is added as a medical support arrearage. New forms FOC 13 and 13a have been developed to implement this law.

### **Opting Out of Friend of the Court Services**

The parties may file a motion not to use the FOC as long as all statutory requirements are met. Parties are required to complete an SCAO form with the court acknowledging that they are choosing to do without FOC services. The SCAO has developed the new “Advice of Rights Regarding Friend of the Court Services” form (FOC 101) and “Order Exempting Case from Friend of the Court Services” (FOC 102) to implement the statute. If a non-friend of the court case becomes a friend of the court case, the court is required to enter an order containing all required provisions for a IV-D case. The new “Uniform Support Order” (FOC 10) may be used for this purpose. FOCs should discontinue all enforcement activities that require potential FOC action when a case opts out. This includes bench warrants (except for those issued after 6-1-03 for contempt for failure to appear), license suspension, FOC activities to perfect or levy on a lien, and any other activities that could require further FOC action after the order to opt out is entered. A new form “Notice of Friend of the Court Case Closure” (FOC 103), has been developed to give the source of income notice of the requirements of the Order Exempting Case from friend of the court services.

FOC forms 3, 3b, 6a, 10, 13, 13a, 16, 19, 49, 58, 65, 80, 82, 87, 89, 94, 101, 102, 103, and CC352a have been created or modified to reflect changes in the law. The Friend of the Court Model Handbook has been updated to reflect the statutory changes.



## FYI

### Reports Due

The following reports are due to the State Court Administrative Office, Friend of the Court Bureau:

- SCAO 28, Grievance Record due January 15, 2003.
- SCAO 28a, Citizen Advisory Committee Report of Activities  
SCAO 28b, Citizen Advisory Committee Grievance Record  
SCAO 28c, Citizen Advisory Committee Review of FOC Grievances  
all due January 15, 2003.
- SCAO 57, Quarterly Statistical Report of the Non-Custodial Parent Work First Program due January 15, 2003.

This first report of FY 2002-2003 is for October 1, 2002, through December 31, 2002. The only non-custodial referrals which should be carried over into this new fiscal year are those who were still enrolled in orientation at a Michigan Works! Agency as of October 1, 2002. Friends of the court may contact Toni Beatty, Management Analyst with questions.

- SCAO 41, Office of the Friend of the Court Statistical Report due February 15, 2003.

### **Starting June, 2003, Form SCAO 28, Grievance Record can be prepared in an electronic format and submitted to the State Court Administrative Office via e-mail.**

In an effort to improve the accuracy and efficiency of reporting grievances, the Friend of the Court Bureau has reproduced the Grievance Record (SCAO 28) in three electronic formats: Excel™, WordPerfect™, and QuattroPro™. As grievance and response information is entered into one of these electronic formats, the totals and the number of days required for response are calculated automatically, greatly reducing the mathematical errors that often occur and saving time that would otherwise be used to perform the calculations manually.

The State Court Administrative Office recommends that friends of the courts use one of these electronic formats when reporting grievances for January through June 2003 (first biannual report) and July through December 2003 (second biannual report). To obtain a copy of the Form SCAO 28 in the software format of their preference, friends of the courts and chief judges should contact the Bureau at [FOCInfo@courts.mi.gov](mailto:FOCInfo@courts.mi.gov) or (517) 373-5975.

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*In June 2003,  
the Grievance  
Record can be  
prepared in an  
electronic format  
and submitted  
... via e-mail.*



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## **Friend of the Court Handbook**

The Friend of the Court Handbook was updated in December 2002. The handbook can be found at: [http://courts.michigan.gov/scao/resources/publications/manuals/focb/focb\\_hbk.pdf](http://courts.michigan.gov/scao/resources/publications/manuals/focb/focb_hbk.pdf). Many of the changes in the handbook were the result of the recent amendments to the Friend of the Court Act and the Support and Parenting Time Enforcement Act. The significant changes to the handbook were:

- ▶ Information about “opting out” of friend of the court services.
- ▶ Information about parenting time enforcement.
- ▶ Information regarding monthly charging of child support.
- ▶ Information about health care enforcement.

## **New Faces at the SCAO**

**Nial Raaen**, was hired as the Trial Court Services Director for the State Court Administrative Office. Nial’s first day with the SCAO was November 20, 2002.

Nial comes to SCAO with over twenty years of experience working in the judiciary, including ten years as administrator of the 14A District Court and as one of the administrators of the Washtenaw County Trial Court. Nial has also worked as a court management consultant in Michigan, and nationally. Nail has been involved with U. S. Agency for International Development, rule of law projects in the Balkans, Africa, and the Middle East.

During his tenure as court administrator in Michigan, Nial served as President of the Michigan Court Administration Association. Nial was also a member of the Trial Court Assessment Commission. He has also been a frequent faculty member for Michigan Judicial Institute.

**Dan Wright**, Special Assistant to Chief Justice Maura D. Corrigan, will head the Friend of the Court Bureau for the State Court Administrative Office. Dan became Bureau Manager on November 1, 2002.

Since his appointment as Special Assistant in December 2001, Dan has focused on child support issues, including the state’s conversion to the federally-mandated Child Support Enforcement System (CSES).

A native of Detroit, Dan graduated in 1970 from Marquette University with a B.A. in journalism. In 1973, he received his law degree from the University of Detroit Law School, where he graduated *magna cum laude*. Dan worked as a practicing attorney from 1973 until 1989. He served six years with the State Appellate Defender Office in Detroit, representing indigent defendants in felony cases in

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coappeals to the Court of Appeals and the Supreme Court, as well as in post-conviction proceedings in trial courts all over the state. Before becoming Special Assistant to the Chief Justice, Dan was a Commissioner of the Supreme Court, beginning in November 1989.

Dan was recently named as a “Lawyer of the Year” for 2002 by Michigan Lawyers Weekly. He was one of only 11 attorneys to be so honored for 2002. The newspaper’s annual “Lawyers of the Year” feature singles out lawyers who have had a significant impact on the legal system. The paper states that it chose attorneys who were “involved in matters that raise challenging legal issues and otherwise furthering the profession’s commitment to the rule of law and concept of justice.”